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IN THE  
**Supreme Court of the United States**  
October Term, 1983

STATE OF NEW JERSEY,

*Petitioner,*

v.

T.L.O., A JUVENILE,

*Respondent.*

ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF NEW JERSEY

**MOTION OF NATIONAL EDUCATION  
ASSOCIATION FOR LEAVE TO FILE BRIEF  
AMICUS CURIAE AND BRIEF AMICUS CURIAE**

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MOTION OF NATIONAL EDUCATION  
ASSOCIATION FOR LEAVE TO FILE  
BRIEF AMICUS CURIAE

The National Education Association ("NEA") hereby moves for leave to file the attached brief amicus curiae. Counsel for the parties have not consented.

NEA is a nationwide employee organization, with a current membership of over 1.6 million. The vast majority of NEA's members are educators in public schools, colleges, and universities. Most of them are teachers. Among the purposes of NEA, as set forth in its charter, are "to . . . advance the interests of the profession of teaching and to promote the cause of education in the United States." To this end, NEA frequently takes part in

legal proceedings that bear on the rights of teachers and of students in the public schools.

The issue in this case is whether and to what extent the Fourth Amendment of the United States Constitution (as applied to the states through the Fourteenth Amendment) restricts teachers or other officials who wish to search students' personal effects for evidence of crimes or infractions of school rules. Two amici curiae have filed briefs in this case, purporting to represent the interests of the nation's educational community, and arguing that the Fourth Amendment should not apply to such searches at all.<sup>1/</sup> Those briefs, filed on

behalf of school boards and principals, contend that application of the Fourth Amendment would interfere with the legitimate need of the nation's schools to maintain discipline and a proper environment for learning. The teachers that NEA represents are in the front line in enforcing school discipline and maintaining an environment in which students can learn. NEA agrees that these goals are essential, but disagrees with the view that application of the Fourth Amendment is inconsistent with achieving them, as long as the standards of the Fourth Amendment are appropriately adapted to the special environment of the schools.

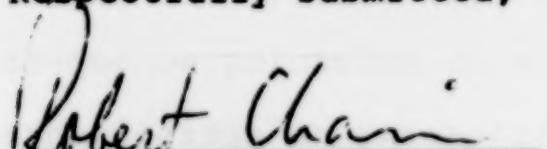
NEA thus has a perspective on this issue that is not being presented by anyone presently before this Court. We

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<sup>1/</sup> Brief Amicus Curiae of National School Boards Association and Brief Amicus Curiae of National Association of Secondary School Principals, and the New Jersey Principals and Supervisors Association.

believe that the attached brief amicus  
curiae will assist the Court in  
resolving the issues presented in this  
case. NEA therefore respectfully moves  
for leave to file the attached brief.

Respectfully submitted,

  
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BRIEF AMICUS CURIAE OF  
NATIONAL EDUCATION ASSOCIATION

INTEREST OF THE AMICUS CURIAE

The members of NEA, who predominantly are teachers in the public schools, have a direct and vital interest in being able to fulfill their mission as public educators. As this Court has recognized, "Alone among employees of the [public school] system, teachers are in direct, day-to-day contact with students both in classrooms and in the other varied activities of a modern school." Ambach v. Norwick, 441 U.S. 68, 78 (1979). Teachers are the ones to whom it most immediately falls to maintain discipline and enforce school rules. They are the ones primarily responsible for

maintaining an environment in which they can practice their profession and in which students can truly learn. At the same time, however, teachers are the ones who bear the greatest responsibility for "inculcating [in students] fundamental values necessary to the maintenance of a democratic political system . . . " Id. at 77-79.

For these reasons, teachers are vitally concerned with the issue in this case: whether and to what extent the Fourth Amendment restricts a school official in searching students' personal effects for the purpose of uncovering evidence of a crime or a breach of school rules. Teachers need effective tools to maintain discipline in the modern schools, but at the same time they recognize the need to teach

students about fundamental constitutional principles by example as well as by textbook lessons.<sup>1/</sup>

The interest of NEA, speaking for its members in this case, is thus to provide the Court with the perspective of a major component of the nation's educational system, as it bears on this case. We believe that this perspective will assist the Court in reaching a

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1/ This Court's reasoning in holding that students enjoy fundamental First Amendment rights is instructive in this context as well:

That [schools] are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 637 (1943).

reasonable accommodation between the needs of the schools to maintain discipline on the one hand, and the rights of students to personal privacy on the other.

#### ARGUMENT

The briefs of New Jersey and of two amici curiae<sup>2/</sup> contend that the Fourth Amendment should have no application to school officials' searches of students and their personal effects. We agree with much that they say about the special needs of schools and the schools' special responsibility to maintain discipline, but we cannot

agree that those considerations require that the Fourth Amendment be completely excluded from the schools. We believe that the Fourth Amendment can be applied to protect a reasonable degree of student privacy without interfering with the schools' ability to accomplish their important mission, as long as the Fourth Amendment is applied carefully, with sensitivity to the special circumstances of the schools. We believe that the decision of the New Jersey Supreme Court and the Brief for the United States in this Court spell out a sound reconciliation of these competing interests, and that the standard they offer for applying the Fourth Amendment in the schools is both

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<sup>2/</sup> Brief Amicus Curiae of National School Boards Association, and Brief Amicus Curiae of National Association of Secondary School Principals, and the New Jersey Principals and Supervisors Association.

practical and fully consistent with the needs of the public schools.<sup>3/</sup>

In this brief we will first address the argument that the Fourth Amendment should not apply at all, and then address some of the practical considerations that should govern the application of the Fourth Amendment to students in the schools.

I. THERE IS NO JUSTIFICATION FOR EXCLUDING THE FOURTH AMENDMENT FROM THE SCHOOLS ALTOGETHER

The basic guaranty of the Fourth Amendment is that "[T]he right of the people to be secure in their persons,

<sup>3/</sup> That standard, as we understand it, is that school officials may search students' personal effects on school premises if they have a reasonable suspicion that the student possesses evidence of a crime or other activity that would interfere with school discipline and order. We take no position on the application of that standard to the facts of this case.

houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." That guaranty is broad, and it generally applies to persons, and their personal effects, wherever they may be found, within the boundaries of the United States.

To our knowledge, there is only one setting in which this Court has held that the Fourth Amendment does not apply at all to what is plainly a search of a person's "effects": a prison. In Hudson v. Palmer, \_\_\_ U.S. \_\_\_, 104 S. Ct. 3194 (1984), the Court held that a prisoner has no legitimate expectation of privacy and that the Fourth Amendment "has no applicability to a prison cell." Id. at 3202, 3205. In every other setting the Court has held that the Fourth

Amendment does apply to searches of persons and their effects, although the necessities of particular situations sometimes allow an entry or search without any reason to suspect that contraband or evidence of a crime may be found. E.g., United States v. Ramsey, 431 U.S. 606 (1977) (Fourth Amendment applies to border searches, but allows searches without cause of all persons or property entering the national borders); Michigan v. Tyler, 436 U.S. 499, 509-10 (1978) (Fourth Amendment applies to firefighters' entry for the purpose of putting out a fire and immediately determining its cause, but exigent circumstances dispense with any need for a warrant or a showing of cause for the investigation.)

The considerations that led this Court to carve out an exception to the Fourth Amendment for prison cells are unique to prisons.

Prisons, by definition, are places of involuntary confinement of persons who have a demonstrated proclivity for antisocial, criminal, and often violent, conduct.

Inmates have necessarily shown a lapse in ability to control and conform their behavior to the legitimate standards of society by the normal impulses of self-restraint; they have shown an inability to regulate their conduct in a way that reflects either a respect for law or an appreciation of the rights of others.

Hudson v. Palmer, supra, 104 S. Ct. at 3200. The only reasonably effective way to maintain order in prisons and ensure the safety of prisoners, staff, and visitors is to maintain constant surveillance of prisoners. Id. For those reasons, the Court concluded that

[a] right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order.

Id. at 3201.

In the nation's schools, by contrast, a reasonable measure of privacy for students in their persons and effects is not inconsistent with the need to maintain order and discipline. There is no need for constant surveillance in the sense that it is required for prisoners; effective supervision of students in schools does not require the same kind of constant monitoring of the personal effects that students place in their lockers or carry with them to class. Students, unlike prisoners, cannot be presumed

antisocial, or unable to conform their conduct to school rules.

The argument is made, however, that a search of students by a school official is not the kind of search that should be covered by the Fourth Amendment, either because a school official is exercising an essentially private authority similar to that of parents, or because the Fourth Amendment was intended to apply only to officials who primarily engage in law enforcement.<sup>4/</sup> Neither of these contentions justifies the complete exclusion of the Fourth Amendment from the schools.

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<sup>4/</sup> E.g., Supplemental Brief for Petitioner Upon Reargument, at 9-13; Brief Amicus Curiae of National School Boards Ass'n, at 8-14, 22.

First, it would be unrealistic to conclude that the authority exercised in the schools is private authority delegated by the parents to the school officials who stand in loco parentis during school hours. Although in a private school the authority over students may be exclusively private, in a public school it exists by virtue of laws compelling school attendance. The authority thus may bear a strong resemblance to the authority of parents, but its source is governmental rather than private. See 3 W. LaFave, Search and Seizure § 10.11, at 453-54 (1978).

Second, this Court has not limited the application of the Fourth Amendment to searches by officials whose job it is to enforce the criminal law or to enforce quasi-criminal regulations.

The terms of the Fourth Amendment are not so limited; they generally protect the right of the people to be free from unreasonable searches. "This Court frequently has relied on the explicit language of the Fourth Amendment as delineating the scope of its affirmative protections." Oliver v. United States, \_\_\_ U.S. \_\_\_, 104 S. Ct. 1735, 1740 n.6 (1984).

This Court has read into the Fourth Amendment only one limitation based on the identity of the person conducting the search: that it be done on governmental authority rather than by a private individual. Burdeau v. McDowell, 256 U.S. 465 (1921). The Court has rejected efforts to restrict the Fourth Amendment's application to those officers charged with enforcing the criminal law. In Camara v.

Municipal Court, 387 U.S. 523, 530-31 (1967), the Court held that the Fourth Amendment's protection of personal privacy is broader than just a protection from unreasonable criminal investigation. It is a general right to be free from unreasonable official intrusions into the privacy of an individual or his property. Id.; See v. City of Seattle, 387 U.S. 541, 543 (1967).

Similarly, in Michigan v. Tyler, supra, the Court held that the Fourth Amendment applies even to a fire-fighter's entry into a burning building to extinguish a fire or to investigate its cause for future fire prevention. 436 U.S. at 505. In analyzing the privacy interests that are protected by the Fourth Amendment, the Court did not see those interests as merely the right

to be free from an official entry to find evidence for a prosecution or a civil fine, but instead recognized the general right of privacy enjoyed by even "innocent fire victims" "living in their homes or working in their offices after a fire." Id. at 505, 510. See also 1 La Fave, supra, § 1.6, at 129-32.<sup>5/</sup> These authorities, we

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<sup>5/</sup> See also Wyman v. James, 400 U.S. 309 (1971). The Court there held that a home visit by a welfare caseworker was not a search because it was merely an interview, it had a "rehabilitative" purpose and it was voluntary (the only consequence if the recipient denied entry to the caseworker was that the welfare aid would be withheld). Id. at 317-318. The fact that the social worker was not engaged in a criminal investigation was not relied upon to negate the existence of a search but only to support the Court's alternate holding that if the visit was a search, it was reasonable within the meaning of the Fourth Amendment. See id. at 318, 323.

submit, preclude a holding that the Fourth Amendment has no application to school searches simply because teachers and other school officials are not in the business of enforcing criminal laws or quasi-criminal regulations.

The risk of serious abuses by school officials, and the nature of those abuses when they occur, provide another reason why the Court should not carve out an exception and should not hold that the Fourth Amendment does not apply to students in the schools.

There are a number of reported decisions documenting indecent intrusions into the personal privacy of school children by overzealous school officials. M.M. v. Anker, 477 F. Supp. 837 (E.D.N.Y.), aff'd, 607 F.2d 588 (2d Cir. 1979) (strip search of 15-year-old female

student without any information that a theft had occurred); Potts v. Wright, 357 F. Supp. 215 (E.D. Pa. 1973) (strip search of eight female junior high school students in search of a missing ring); Doe v. Renfrow, 631 F.2d 91 (7th Cir. 1980), cert. denied, 451 U.S. 1022 (1981) (strip search of four junior high school students); Rone v. Daviess County Board of Education, 655 S.W.2d 28 (Ky. App. 1983) (strip search of male high school student); Stern v. New Haven Community Schools, 529 F. Supp. 31 (E.D. Mich. 1981) (observation of activity in boys' bathroom through two-way mirror). These searches are precisely the kinds of invasion of privacy that the Fourth Amendment was intended to prevent. That they occurred in the schools makes them no less a concern under the Fourth Amendment.

II. THE SPECIAL CHARACTERISTICS OF SCHOOLS NONETHELESS MUST BE CONSIDERED IN ARRIVING AT THE STANDARD THAT THE FOURTH AMENDMENT REQUIRES IN THE SCHOOLS

Even though the special characteristics of schools do not justify making the Fourth Amendment inapplicable altogether to searches of students, they do require that the Fourth Amendment standards be molded for special application to students in the schools. We agree generally with the standard applied by the New Jersey Supreme Court in this case, and with the analysis in the Brief for the United States. We agree that the appropriate standard for searching a student is reasonable suspicion that the student has committed a crime or violated a school rule. Rather than repeating the analysis that leads to

that conclusion, we write simply to call attention to some particular aspects of the issue, on which we believe the perspective of teachers may assist the Court.

1. It is immediately obvious that many of the specific restraints that the Fourth Amendment places on police investigations and searches cannot appropriately be applied in the schools. For example, in Brown v. Texas, 443 U.S. 47 (1979), the Court held that police cannot stop a person on the street, without reasonable suspicion that he has committed a crime, and compel him to identify himself and explain his presence. This rule would not be appropriate in the school setting, because of the legitimate interest that schools have in keeping students in their classrooms

during teaching periods. The freedom of citizens to move about on the public streets simply has no application to students in school. Accordingly, the rules that have evolved under the Fourth Amendment to govern police conduct should not be automatically applied in the schools without consideration whether the particular rule is appropriate in that setting.

2. The "reasonable suspicion" that is required in the schools to justify a search must not be limited to suspicion of criminal activity.

Teachers are not in the business of enforcing the criminal laws, and unlike police officers, it is not their responsibility to know what conduct can be punished as crime. Instead the responsibility of teachers is to enforce the school rules that have been

adopted to preserve order and make learning possible. A teacher must have the necessary tools to enforce those rules. If a suspected violation of a rule threatens to disrupt the school or threatens to harm students, school officials should be free to search for evidence of it, or for the "instrumentality" of the infraction, even though no crime is involved. See, e.g., Marshall v. Barlow's, Inc., 436 U.S. 307, 320 (1978); Camara v. Municipal Court, supra, 387 U.S. at 535.

3. We do not understand any of the parties or amici curiae in this case to contend that reasonable suspicion, which is adequate to support a search of the student's pockets, book satchel, or purse, is adequate to justify the greater intrusion of a

strip search. This case obviously does not present any question whether school officials could ever appropriately conduct strip searches of students, but at a minimum such a search would require greater justification than the "reasonable suspicion" standard would provide. Cf., e.g., United States v. Brignoni-Ponce, 422 U.S. 873, 883 (1975) (use of "reasonable suspicion" standard for stopping an automobile near the border is justified in part by the "modest" intrusion that such a stop entails); 3 La Fave, supra, § 10.5(b), at 281-86 (a person entering the U.S. at a border is subject to a search of his personal effects without any cause at all, but it is an "established rule" that some degree of individualized

suspicion is necessary for a strip search.)<sup>6/</sup>

4. Finally, it is worth noting that the justification for applying a "reasonable suspicion" standard to searches of students rests in large part on the special relationship between students and school officials and the special characteristics of youth. See Brief for United States, at

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6/ Similarly, this case does not require a decision on the question whether schools can search students' lockers more freely than their pockets or purses. It is possible that a student's expectation of privacy in a locker could depend in part on the school's announced policy about searching lockers. But, we cannot agree with the suggestion made by Petitioner that simply because the school owns the lockers, it can search them at any time without reasonable suspicion. See Mancusi v. De Forte, 392 U.S. 364, 368 (1968); Cf. Gillard v. Schmidt, 579 F.2d 825, 829 (3d Cir. 1978).

18-19, 21. Those special considerations do not apply equally to adults who may be on school premises.

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